

RLI Insurance Company v. Indian River School District, et al.
William H. McDaniel,

<p style="text-align: right;">74</p> <p>1 Q. I appreciate that. Okay. So we're looking now 2 at McDaniel 10. Sir, have you seen that document 3 before today? 4 A. I have. 5 Q. And are you familiar with what Mr. McHenry is 6 talking about in this letter? 7 A. I am. 8 Q. And what was your understanding of -- well, 9 let's get more specific. The letter says in the first 10 sentence, "Since last December, we have been delayed 11 by the lack of progress of the concrete contractor." 12 If we then jump down to the very last sentence that 13 says, "Everyday the job gets farther behind due to 14 lack of work by the concrete contractor and everyday 15 our costs increase." Do you see that? 16 A. Yes. 17 Q. Can you tell me what he means by the lack of 18 progress of the concrete contractor? 19 A. Well, it says in the letter, right in the 20 second sentence, the two main problems is "lack of 21 manpower and inability to pour the footers in the 22 correct places." They poured a whole wing in the 23 wrong place. 24 Q. Okay. What do you mean they poured a whole</p>	<p style="text-align: right;">76</p> <p>1 Q. Do you know as you sit here today? 2 A. No, I don't know. I don't know. 3 Q. All right. If you can take a look at McDaniel 4 11. Take your time to look at it, sir. My first 5 question is going to be whether or not you wrote this 6 letter. 7 A. I am ready. 8 Q. Sir, did you write this letter? 9 A. I did. 10 Q. If you'd take a look at the first page, and, 11 specifically, the indented paragraph, which is the 12 third one down, it says, "The contractor agrees to 13 adhere to the intermediate milestone dates and dates 14 of substantial and final completion established 15 herein." Do you see that? 16 A. Yes. 17 Q. Sir, was that, do you understand, a citation of 18 specification Section 1305? 19 A. You are confusing me. I'm sorry. 20 Q. Are you citing there language from the 21 specifications? 22 A. Do you want me to read it again? It's been 23 since May 8th of '03. 24 Q. Okay. The letter speaks for itself, I think.</p>
<p style="text-align: right;">75</p> <p>1 wing in the wrong place? 2 A. It was not in the proper location. 3 Q. Okay. And do you know what the concrete -- did 4 the concrete contractor have to fix the situation? 5 A. They had to redo it. 6 Q. Did they have to rip out concrete, do you know? 7 A. I don't know whether they did or they made a 8 new place. I had to move my work. 9 Q. Okay. 10 A. Because it was now in the wrong place. I 11 didn't have to, but I was required to. 12 Q. Was there other work available for your company 13 to perform at that time? 14 A. No. 15 Q. Well, you just said you had to move to another 16 place. Did you mean another job? 17 A. No, no. I can't -- if they put the building in 18 the wrong place, the plumbing is in the wrong place. 19 So it has to be redone. 20 Q. So were there other areas that McDaniel could 21 have been working on plumbing at that time? 22 MS. HALATYN: Objection. Calls for 23 speculation. You can answer. 24 A. I could look at the job. I mean --</p>	<p style="text-align: right;">77</p> <p>1 So we'll leave it at that and move to another 2 question. 3 At the third page, at the end of the first 4 full paragraph, the sentence reads, "As a result, 5 McDaniel Heating & Plumbing has been forced to find 6 other work to perform, which" -- 7 A. I am not in the right place. Okay. I see it. 8 Q. All right. "As a result, McDaniel Heating & 9 Plumbing has been forced to find other work to 10 perform, which is out of sequence with its original 11 bid proposal to the owner." Do you see that? 12 A. Mm-hmm. 13 Q. Sir, what did you mean when you wrote that 14 sentence? 15 A. Like I said, it's a long time ago. I mean it's 16 just like you said, it speaks for itself. The 17 concrete -- the same as the first letter. The 18 concrete contractor wasn't doing the job. We were 19 there; we weren't there. We started; we stopped. We 20 put it in; we took it out. 21 Q. You said the sentence speaks for itself. 22 Correct me -- I want to know if my understanding is 23 correct. What I think that sentence is saying is that 24 McDaniel had to move to another place in the building</p>

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<p style="text-align: right;">78</p> <p>1 to do its work and was being forced to do work out of 2 sequence? 3 A. At the time I wrote this, I reviewed the job 4 logs. It's been a long time ago. I don't know if I 5 have seen them since. There is a daily log, so. 6 Q. Okay. Were daily logs kept for the entire 7 duration of the project? The reason I ask 8 specifically is that the daily logs that have been 9 produced end in June of 2004. So I am really asking 10 whether there are logs after that time frame for this 11 project. 12 A. If -- EDiS required them to be turned in every 13 day. If they don't have them, I would say there 14 weren't any. I know they stopped at a certain point. 15 Q. If you had had copies of daily log after June 16 of 2004, would you have kept copies in your file? 17 A. I would have. 18 Q. If we look down to the second paragraph, second 19 full paragraph on the last page. 20 A. The bottom paragraph? 21 Q. Yes. The third sentence. 22 A. "We intend"? 23 Q. Correct. It says, "We intend to provide you 24 with details concerning our additional costs,</p>	<p style="text-align: right;">80</p> <p>1 letter. I still haven't gotten one. 2 Q. Do you recall whether you resubmitted that 3 before McDaniel was terminated? 4 A. It was before I was terminated. 5 Q. And you don't recall when you submitted it? 6 A. No. 7 Q. Have you ever prepared a formal delay claim for 8 the project? 9 A. No. 10 Q. Why not? 11 MS. HALATYN: Objection. You can answer. 12 THE WITNESS: Pardon? 13 MS. HALATYN: You can answer to the extent 14 that you know. 15 THE WITNESS: Well, we got fired. 16 BY MS. PETRONE: 17 Q. Okay. McDaniel 12. McDaniel 12 is an 18 August 20th, 2003 letter written by 19 Christian J. McCone from EDiS to Bill McDaniel. To 20 you, sir. Do you recall receiving this letter? 21 A. I believe I received it, yes. I don't 22 particularly recall, but, yes. 23 Q. All right. In this letter, in the first 24 sentence, he, Mr. McCone, is saying now McDaniel is</p>
<p style="text-align: right;">79</p> <p>1 including labor overruns, extended field conditions 2 costs, extended home office overhead costs to account 3 for delays caused by the owner or its concrete 4 contractor." Do you see that? 5 A. Mm-hmm. 6 Q. Yes? 7 A. Yes. 8 Q. Did you provide details? 9 A. No. 10 Q. The next sentence says, "We are in the process 11 of determining these additional costs and will 12 transmit them to you once they are finalized." Did 13 you do that? 14 A. No. 15 Q. Did you ever follow up on this letter? 16 A. I never got a response. 17 Q. Did you ever send any additional letters? 18 A. I did. 19 Q. What letters do you recall sending? 20 A. I sent this additionally, again. 21 Q. You sent this a second time? 22 A. Yes. 23 Q. When was that? 24 A. It was later on. I never had an answer to this</p>	<p style="text-align: right;">81</p> <p>1 falling behind schedule. Do you see that? 2 A. Yes. 3 Q. He goes on to say, "This is impacting the 4 completion of the project." 5 A. Mm-hmm. 6 Q. And then in the final full paragraph, he says, 7 "You are directed to take the necessary steps to 8 regain the schedule." Do you see that? 9 A. Yes. 10 Q. Then he is threatening to call your bonding 11 company? 12 A. Yes. 13 Q. Did you respond to this letter? 14 A. Not that I recall. 15 Q. Did you take any action in response to this 16 letter? 17 MS. HALATYN: Objection. You can answer. 18 A. You know, we're talking about August 20th of 19 '03. Of course, I took action, but I don't remember 20 what it was. You keep asking me about these things in 21 '03, like what I did that day. Do you know what I 22 mean? I -- I certainly went there. But I don't 23 remember what day I went there or what time or 24 anything.</p>